

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.85 of 2004

Reserved on : April 11, 2007

H.P. Financial Corporation

....Petitioner.

VERSUS

SDO (C) and others

....Respondents.

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The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?

For the Petitioner : Mr. M.L. Sharma, Advocate.

For the Respondents : Mr. C.B. Singh, Deputy Advocate General, for respondent No.1.

Mr. Suneet Goel, Advocate, for respondent No.4.

Surjit Singh, Judge (Oral)

The grievance of the writ petitioner, i.e. the H.P. Financial Corporation, is against the order of Commissioner under Workmen's Compensation Act, whereby it has been directed to make payment of compensation awarded to an employee of respondent No.2, under the Workmen's Compensation Act.

2. Relevant facts may be noticed. Respondent No.2 took a loan from the writ petitioner for establishment of its industrial unit by mortgaging the site of the industrial unit and pledging the assets of the unit. Respondent No.2 defaulted in repaying the loan. The writ petitioner, in exercise of the right, under sub section (1) of Section 29 of the State Financial Corporations Act, hereafter called the Act, took

Whether the reporters of the local papers may be allowed to see the Judgment?

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over the possession of the mortgaged property as also the pledged assets. This was done in the year 1995. Respondent No.4, a workman of respondent No.2, sustained injury in the course of his employment and applied for compensation to the Commissioner, under Workmen's Compensation Act, sometime in the year 1987. The matter was decided in the year 1996 and certain amount of compensation was ordered to be paid to respondent No.4 by respondent No.2. When the compensation money was not paid, Execution Petition was filed by respondent No.4 against respondent No.2. It appears that respondent No.2 took the plea that the possession of the unit and the assets having been taken over by the writ petitioner, the compensation money was liable to be paid by the writ petitioner. An application was moved for impleading the writ petitioner as party, in view of the provisions of sub section (5) of Section 29 of the Act. That application was allowed. Thereafter, an order was passed by the Commissioner under Workmen's Compensation Act directing the writ petitioner to pay the compensation money, together with penalty, costs, etc.

3. Learned counsel representing the writ petitioner has made four-fold submissions, which are as follows:

- (a) The writ petitioner itself could not have been impleaded as party to the Execution Petition, but respondent No.2 was required to be made a party through the writ petitioner.
- (b) The writ petitioner has not taken over the management of respondent No.2 and, hence, sub section (5) of Section 29 of the Act is not attracted.

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(c) The liability for the payment of compensation money has to be proportionate to the money due to the writ petitioner.

(d) The writ petitioner having been brought on record only in 2003, it cannot be made to pay the amount of penalty as also the amount of interest.

4. We find no merit in any of the aforesaid submissions.

5. As regards first submission, the defect is only of form and not substance. The writ petitioner having taken over the assets of respondent No.2 stepped into the shoes of respondent No.2 by virtue of sub section (5) of Section 29 of the Act. Therefore, respondent No.2's liability is required to be cleared by the writ petitioner. It makes no difference whether the respondent was impleaded in the execution proceedings in its own name or in the name of respondent No.2.

6. Coming to submission (b), a joint reading of sub sections (1) and (5) of Section 29 of the Act makes it clear that the State Financial Corporation steps into the shoes of the debtor company when it takes over either the management or assets or both of the concerned company. In the present case, admittedly, the unit and the assets of respondent No.2 have been taken over and, therefore, sub section (5) of Section 29 of the Act is attracted. At the cost of repetition we may say that sub section (5) of Section 29 of the Act is attracted even when either the management or the assets are taken over and it is not necessary that the management must be taken over as is canvassed by the learned counsel.

7. We do not agree with the submission (c) that the liability of the writ petitioner is to the extent the compensation money

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awarded in favour of respondent No.4 bears proportion to the money due to it from respondent No.2. The writ petitioner having taken over all the assets of respondent No.2 is liable to pay the entire amount of compensation, because the workman has the statutory right to recover it from the employer. Of course, the liability of the writ petitioner cannot be more than the value of the assets it has taken over. Admittedly, the compensation money payable to respondent No.4 is less than the value of the assets of respondent No.2 taken over by the writ petitioner.

8. As regards submission (d), the writ petitioner having stepped into the shoes of respondent No.2 by fiction of law becomes the employer of the workman and, therefore, it cannot escape the liability for payment of penalty.

9. As a result of the above discussion, the writ petition is dismissed.

10. Pending application, if any, also stands disposed of.

(Surjit Singh), J.

April 11, 2007_(sd)

(Sanjay Karol), J.